HOUSE DOCKET, NO. 1183 FILED ON: 1/16/2013

HOUSE . . . . . No. 1998

The Commonwealth of Massachusetts

PRESENTED BY:

Louis L. Kafka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act affirming a terminally ill patient's right to compassionate aid in dying.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Louis L. Kafka	*8th Norfolk*
William C. Galvin	*6th Norfolk*
Kathi-Anne Reinstein	*16th Suffolk*
Anne M. Gobi	*5th Worcester*
Cleon H. Turner	*1st Barnstable*
John D. Keenan	*7th Essex*
Josh S. Cutler	*6th Plymouth*
Tom Sannicandro	*7th Middlesex*
Ellen Story	*3rd Hampshire*
Michael Barrett	*Third Middlesex*
Martha M. Walz	*8th Suffolk*
Patricia D. Jehlen	*Second Middlesex*
James B. Eldridge	*Middlesex and Worcester*
Cory Atkins	*14th Middlesex*
Lori A. Ehrlich	*8th Essex*
Thomas P. Conroy	*13th Middlesex*

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HOUSE . . . . . No. 1998

By Mr. Kafka of Stoughton, a petition (accompanied by bill, House, No. 1998) of Louis L. Kafka and others relative to providing care and comfort for the terminally ill. Public Health.

The Commonwealth of Massachusetts

An Act affirming a terminally ill patient's right to compassionate aid in dying.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1: Recognizing the importance of individual dignity, informed consent, and the right to bodily self-determination at the end of life, it is hereby declared that the Commonwealth of Massachusetts affirms the existing right of capable, terminally ill patients to request compassionate aid in dying and obtain medication from a physician meeting medical best practices that the patient can choose to self-administer bring about a humane and dignified death. This act is necessary to protect the public peace, health, safety or convenience of the Commonwealth and its residents by defining safeguards that will (a) guide health care providers and patient advocates who provide support to dying patients; (b) assist capable terminally ill patients requesting aid in dying; (c) protect vulnerable persons from abuse; and (d) ensure that such process is entirely voluntary on the part of all participants, including the patient, his or her physicians, and any other health care provider or facility providing the patient services or care.

Section 2: The General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting after Chapter 201F the following new chapter:-

CHAPTER 201G

MASSACHUSETTS COMPASSIONATE CARE FOR THE TERMINALLY ILL ACT

Section 1. Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Adult" means an individual who is 18 years of age or older.

"Aid in Dying" means the medical practice of a physician prescribing lawful medication to a qualified patient, which the patient may chose to self-administer to bring about a humane and dignified death.

23 “Attending physician” means the physician who has primary responsibility for the care of
24 a terminally ill patient.

25 “Capable” means having the capacity to make health care decisions and to communicate
26 them to health care providers, including communication through persons familiar with the
27 patient’s manner of communicating if those persons are available.

28 “Consulting physician” means a physician who is qualified by specialty or experience to
29 make a professional diagnosis and prognosis regarding a terminally ill patient’s condition.

30 “Counseling” means one of more consultations as necessary between a state licensed
31 psychiatrist or psychologist and a patient for the purpose of determining that the patient is
32 capable and not suffering from a psychiatric or psychological disorder or depression causing
33 impaired judgment.

34 “Health care provider” means a person licensed, certified, or otherwise authorized or
35 permitted by law to administer health care or dispense medication in the ordinary course of
36 business or practice of a profession, and includes a health care facility.

37 “Informed decision” means a decision by a qualified patient to request and obtain a
38 prescription for medication pursuant to this chapter that is based on an understanding and
39 acknowledgment of the relevant facts and that is made after being fully informed by the
40 attending physician of:

41 (a) His or her medical diagnosis;

42 (b) His or her prognosis;

43 (c) The potential risks associated with taking the medication to be prescribed;

44 (d) The probable result of taking the medication to be prescribed; and

45 (e) The feasible alternatives or additional treatment opportunities, including but not
46 limited to palliative care as defined in Ch. 111 § 227.

47 “Medically confirmed” means the medical opinion of the attending physician has been
48 confirmed by a consulting physician who has examined the patient and the patient’s relevant
49 medical records.

50 “Palliative care” means a health care treatment as defined in palliative care as defined in
51 Ch. 111 § 227, including interdisciplinary end-of-life care and consultation with patients and
52 family members, to prevent or relieve pain and suffering and to enhance the patient’s quality of
53 life, including hospice.”

54 “Patient” means an individual who has received health care services from a health care
55 provider for treatment of a medical condition.

56 “Physician” means a doctor of medicine or osteopathy licensed to practice medicine in
57 Massachusetts by the board of registration in medicine.

58 “Qualified patient” means a capable adult who is a result of Massachusetts, has been
59 diagnosed as being terminally ill, and has satisfied the requirements of this chapter.

60 “Resident” means an individual who demonstrates residency in Massachusetts by means
61 that include but are not limited to:

62 (a) Possession of a Massachusetts driver’s license;

63 (b) Proof of registration to vote in Massachusetts;

64 (c) Proof that the individual owns or leases real property in Massachusetts;

65 (d) Proof that the individual has resided in a Massachusetts health care facility for at
66 least 3 months;

67 (e) Computer-generated bill from a bank or mortgage company, utility company,
68 doctor, or hospital;

69 (f) A W-2 form, property or excise tax bill, or Social Security Administration or
70 other pension or retirement annual benefits summary statement dated within the current or prior
71 year;

72 (g) A Medicaid or Medicare benefit statement; or

73 (h) Filing of a Massachusetts tax return for the most recent tax year;

74 “Self-administer” means a qualified patient’s act of ingesting medication obtained
75 pursuant to this chapter.

76 “Terminally ill” means having a terminal illness or condition which can reasonably be
77 expected to cause death within 6 months, whether or not treatment is provided.

78 Section 2. Terminally ill patient’s right to request aid in dying and obtain prescription for
79 medication pursuant to this chapter.

80 (1) A terminally ill patient may request aid in dying and a prescription for medication
81 they can chose to self-administer if the patient:

82 (a) is a competent adult;

83 (b) is a resident of Massachusetts;

84 (c) has been determined by the patient's attending physician and, except as provided
85 in section 8, by a consulting physician to be terminally ill; and

86 (d) has voluntarily expressed the wish to receive medication which the patient may
87 choose to self-administer to bring about a humane and dignified death.

88 (2) A person may not qualify under this chapter solely because of age or disability.

89 Section 3. Form of the written request. Request process -- witness requirements.

90 (1) A patient wishing to receive a prescription for medication pursuant to this chapter
91 shall submit a written request to the patient's attending physician in substantially the form set
92 form in Section 4.

93 (2) A valid written request must be witnessed by at least two individuals who, in the
94 presence of the patient, attests that to the best of their knowledge and belief that patient is:

95 (a) competent;

96 (b) acting voluntarily; and

97 (c) not being coerced to sign the request.

98 (3) At least one of the witnesses shall be a person who is not:

99 (a) a relative of the patient by blood, marriage, or adoption;

100 (b) a person who at the time the request is signed would be entitled to any portion of the

101 estate of the qualified patient upon death under any will or by operation of law; and

102 (c) an owner, operator, or employee of a health care facility where the qualified patient is

103 receiving medical treatment or is a resident.

104 (4) The patient's attending physician at the time the request is signed shall not serve as a
105 witness.

106 (5) If the patient is a patient in a long-term care facility at the time the written request is
107 made, one of the witnesses shall be an individual designated by the facility.

108 Section 4. Form of Written Request and Witness Declaration.

109 REQUEST FOR MEDICATION PURSUANT TO THE MASSACHUSETS
110 COMPASSIONATE CARE FOR THE TERMINALLY ILL ACT

111 I,. . . . . , am an adult of sound mind and a resident of the State of
112 Massachusetts. I am suffering from . . . . . , which my attending physician has
113 determined is a terminal illness or condition which can reasonably be expected to cause death
114 within 6 months. This diagnosis has been medically confirmed as required by law.

115 I have been fully informed of my diagnosis, prognosis, the nature of medication to be
116 prescribed and potential associated risks, the expected result, and the feasible alternatives,
117 including comfort care, hospice care, and pain control.

118 I request that my attending physician prescribe medication that I may self-administer to
119 end my life in a humane and dignified manner and to contact any pharmacist to fill the
120 prescription.

121 INITIAL ONE:

122 . . . . . I have informed my family of my decision and taken their opinions into
123 consideration.

124 . . . . . I have decided not to inform my family of my decision.
125 . . . . . I have no family to inform of my decision.

126 I understand that I have the right to rescind this request at any time. I understand the full
127 import of this request and I expect to die if and when I take the medication to be prescribed. I
128 further understand that although most deaths occur within three hours, my death may take longer
129 and my physician has counseled me about this possibility. I make this request voluntarily and
130 without reservation, and I accept full moral responsibility for my actions.
131 Signed:. . . . . Dated:. . . . . .

132 DECLARATION OF WITNESSES

133 By initialing and signing below on or after the date the person named above signs, we
134 declare that the person making and signing the above request:
135 Witness 1 Witness 2

136 Initials Initials

137 1. Is personally known to us or has provided proof of identity;

138 2. Signed this request in our presence on the date of the person's signature;

139 3. Appears to be of sound mind and not under duress, fraud, or undue influence; and

140 4. Is not a patient for whom either of us is the attending physician.

141 Printed Name of Witness 1: . . . . . .

142 Signature of Witness l/Date:. . . . . .

143 Printed Name of Witness 2:. . . . . .

144 Signature of Witness 2/Date:. . . . . .

145 Section 5. Right to rescind request -- requirement to offer opportunity to rescind.

146 (1) A qualified patient may at any time rescind the qualified patient's request for
147 medication.

148 (2) A prescription for medication under this chapter may not be written without the
149 attending physician offering the patient an opportunity to rescind the request for medication.

150 Section 6. Attending physician responsibilities.

151 (1) The attending physician shall:

152 (a) make the initial determination of whether an adult patient:

153 (i) is a resident of this state;

154 (ii) is terminally ill;

155 (iii) is competent; and

156 (iv) has voluntarily made the request for aid in dying.

157 (b) ensure that the patient is making an informed decision by discussing with the patient:

158 (i) his or her medical diagnosis;

159 (ii) his or her prognosis;

160 (iii) the potential risks associated with taking the medication to be prescribed;

161 (iv) the probable result of taking the medication to be prescribed; and

162 (v) the feasible alternatives or additional treatment opportunities, including but not

163 limited to palliative care as defined in Ch. 111 § 227.

164 (c) except as provided in section 8, refer the patient to a consulting physician to medically
165 confirm the diagnosis and prognosis and for a determination that the patient is competent and is
166 acting voluntarily;

167 (d) if appropriate, refer the patient for counseling pursuant to section 9;

168 (e) recommend that the patient notify the patient's next of kin;

169 (f) counsel the patient about the importance of:

170 (i) having another person present when the patient takes the medication prescribed

171 pursuant to this chapter; and

172 (ii) not taking the medication in a public place;

173 (h) inform the patient that the patient may rescind the request for medication at any time
174 and in any manner;

175 (i) verify, immediately prior to writing the prescription for medication, that the patient is

176 making an informed decision;

177 (j) fulfill the medical record documentation requirements of section 13;

178 (k) ensure that all appropriate steps are carried out in accordance with this chapter before

179 writing a prescription for medication for a qualified patient; and

180 (l) (i) dispense medications directly, including ancillary medications intended to
181 facilitate the desired effect to minimize the patient's discomfort, if the attending physician is
182 authorized under law to dispense and has a current drug enforcement administration certificate;
183 or

184 (ii) with the qualified patient's written consent:

185 (A) contact a pharmacist, inform the pharmacist of the prescription, and

186 (B) deliver the written prescription personally, by mail, or by otherwise permissible
187 electronic communication to the pharmacist, who will dispense the medications directly to either
188 the patient, the attending physician, or an expressly identified agent of the patient. Medications
189 dispensed pursuant to this paragraph (l) shall not be dispensed by mail or other form of courier.

190 (2) The attending physician may sign the patient's death certificate which shall list the
191 underlying terminal disease as the cause of death.

192 Section 7. Consulting physician confirmation -- waiver.

193 (1) Before a patient may be considered a qualified patient under this chapter the a
194 consulting physician shall:

195 (a) examine the patient and the patient's relevant medical records;

196 (b) confirm in writing the attending physician's diagnosis that the patient is suffering
197 from a terminal illness; and

198 (c) verify that the patient:

199 (i) is capable;

200 (ii) is acting voluntarily; and

201 (iii) has made an informed decision.

202 (2) (a) The requirements of this section do not apply if in the attending physician's
203 opinion the requirements would result in an undue hardship for the patient because:

204 (i) the terminally ill patient's condition is sufficiently advanced that confirmation of the
205 illness is not necessary; or

206 (ii) an appointment with a consulting physician cannot be made within a reasonable
207 amount of time or with a physician who is within a reasonable distance of the patient's residence.

208 (b) An attending physician who waives the requirement for a confirmation by a
209 consulting physician shall document the reasons for the waiver in the medical documentation
210 required pursuant to section 8.

211 Section 8. Counseling referral.

212 (1) An attending physician or a consulting physician shall refer a patient who has
213 requested medication under this chapter for counseling if in the opinion of the attending
214 physician or the consulting physician the patient may be suffering from a psychiatric or
215 psychological disorder or depression causing impaired judgment.

216 (2) The medication may not be prescribed until the person performing the counseling
217 determines that the patient is not suffering from a psychiatric or psychological disorder or
218 depression causing impaired judgment.

219 Section 9. Informed decision required.

220 A qualified patient may not receive a prescription for medication pursuant to this chapter
221 unless the patient has made an informed decision as defined in section 2. Immediately before
222 writing a prescription for medication under this chapter the attending physician shall verify that
223 the qualified patient is making an informed decision.

224 Section 10. Family notification recommended -- not required.

225 The attending physician shall recommend that a patient notify the patient's next of kin of
226 the patient's request for medication pursuant to this chapter. A request for medication under
227 shall not be denied because a patient declines or is unable to notify the next of kin.

228 Section 11. Right to rescind request -- requirement to offer opportunity to rescind.

229 (1) A qualified patient may at any time rescind the request for medication pursuant to this
230 chapter without regard to the qualified patient's mental state.

231 (2) A prescription for medication pursuant to this chapter may not be written without the
232 attending physician offering the qualified patient an opportunity to rescind the request for
233 medication.

234 Section 12. Medical record documentation requirements.

235 The following items must be documented or filed in the patient's medical record:

236 (1) the determination and the basis for determining that a patient requesting medication
237 pursuant to this chapter is a qualified patient;

238 (2) all oral requests by a patient for medication;

239 (3) all written requests by a patient for medication made pursuant to sections 3 through 5;

240 (4) the attending physician's diagnosis, prognosis, and determination that the patient is
241 competent, is acting voluntarily, and has made an informed decision;

242 (5) unless waived as provided in section 8, the consulting physician's diagnosis,
243 prognosis, and verification that the patient is competent, is acting voluntarily, and has made an
244 informed decision;

245 (6) the reasons for waiver of confirmation by a consulting physician, if a waiver was
246 made;

247 (7) a report of the outcome and determinations made during counseling, if performed

248 (8) the attending physician's offer before prescribing the medication to allow the qualified
249 patient to rescind the patient's request for the medication; and

250 (9) a note by the attending physician indicating:

251 (a) that all requirements under this chapter have been met; and

252 (b) the steps taken to carry out the request, including a notation of the medication
253 prescribed.

254 Section 13. Disposal of unused medications.

255 Any medication dispensed under this chapter that was not self-administered shall be
256 disposed of by lawful means.

257 Section 14. Effect on wills, contracts, insurance, annuities, statutes and regulations.

258 (1) Any provision in a contract, will, or other agreement, whether written or oral, to the
259 extent the provision would affect whether a person may make or rescind a request for medication
260 pursuant to this chapter, is not valid.

261 (2) A qualified patient's act of making or rescinding a request for aid in shall not: provide
262 the sole basis for the appointment of a guardian or conservator.

263 (3) A qualified patient's act of self-administering medication obtained pursuant to this act
264 shall not constitute suicide or have an effect upon any life, health, or accident insurance or
265 annuity policy.

266 (4) Actions taken by health care providers and patient advocates supporting a qualified
267 patient exercising his or her rights pursuant to this chapter, including being present when the
268 patient self-administers medication, shall not for any purpose, constitute elder abuse, neglect,
269 assisted suicide, mercy killing, or homicide under any civil or criminal law or for purposes of
270 professional disciplinary action.

271 (5) State regulations, documents and reports shall not refer to the practice of aid in dying
272 under this chapter as" suicide" or "assisted suicide."

273 Section 15. Provider Participation

274 (1) A health care provider may choose whether to voluntarily participate in providing to a
275 qualified patient medication pursuant to this act and is not under any duty, whether by contract,
276 by statute, or by any other legal requirement, to participate in providing a qualified patient with
277 the medication.

278 (2) A health care provider or professional organization or association may not subject an
279 individual to censure, discipline, suspension, loss of license, loss of privileges, loss of
280 membership, or other penalty for participating or refusing to participate in providing medication
281 to a qualified patient pursuant to this chapter.

282 (3) If a health care provider is unable or unwilling to carry out a patient's request under
283 this chapter and the patient transfers care to a new health care provider, the prior health care
284 provider shall transfer, upon request, a copy of the patient's relevant medical records to the new
285 health care provider.

286 (4) (a) Health care providers shall maintain and disclose to consumers upon request
287 their written policies outlining the extent to which they refuse to participate in providing to a
288 qualified patient any medication pursuant to this act.

289 (b) The required consumer disclosure shall at minimum:

290 (i) include information about the Massachusetts Compassionate Care for the Terminally
291 Ill Act;

292 (ii) identify the specific services in which they refuse to participate;

293 (iii) clarify any difference between institution-wide objections and those that may be
294 raised by individual licensed providers who are employed or work on contract with the provider;

295 (iv) describe the mechanism the provider will use to provide patients a referral to another
296 provider or provider in the provider's service area who is willing to perform the specific health
297 care service;

298 (v) describe the provider's policies and procedures relating to transferring patients to
299 other providers who will implement the health care decision;

300 (vi) inform consumers that the cost of such transfer will be borne by the transferring
301 provider;

302 (vii) describe the internal and external consumer complaint processes available to persons
303 affected by the provider's objections.

304 (c) The consumer disclosure shall be provided:

305 (i) to any person upon the request;

306 (ii) to a patient or resident or their authorized appointed health care agents, guardians,
307 surrogate decision-maker upon admission or at the time of initial receipt of health care.

308 Section 16. Liabilities.

309 (1) Purposely or knowingly altering or forging a request for medication pursuant to this
310 chapter without authorization of the patient or concealing or destroying a rescission of a request
311 for medication is punishable as a felony if the act is done with the intent or effect of causing the
312 patient's death.

313 (2) A person who coerces or exerts undue influence on a patient to request medication to
314 end the patient's life, or to destroy a rescission of a request, shall be guilty of a felony punishable
315 by imprisonment in the state prison for not more than three years or in the house of correction for
316 not more than two and one-half years or by a fine of not more than one thousand dollars or by
317 both such fine and imprisonment.

318 (3) Nothing in this act limits further liability for civil damages resulting from other
319 negligent conduct or intentional misconduct by any person.

320 (4) The penalties in this chapter do not preclude criminal penalties applicable under other
321 law for conduct inconsistent with the provisions of this act.

322 Section 17. Claims by governmental entity for costs incurred.

323 A governmental entity that incurs costs resulting from a qualified patient self-
324 administering medication in a public place while acting pursuant to this chapter may submit a
325 claim against the estate of the person to recover costs and reasonable attorney fees related to
326 enforcing the claim.

327 Section 18. Construction.

328 Nothing in this chapter may be construed to authorize a physician or any other person to
329 end a patient's life by lethal injection, mercy killing, assisted suicide, or active euthanasia.

330 Section 19. Severability.

331 If any provision of this act or its application to any person or circumstance is held invalid,
332 the remainder of the act or the application of the provision to other persons or circumstances is
333 not affected.